IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

CRL.A.No. 1663 of 2007()

AGAINST THE ORDER IN CC.333/1996 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOLLAM

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APPELLANT: COMPLAINANT

SIVADMAJAN,S/O. VASUDEVAN,
THRIPPADA HOUSE, MEVARAM PINAKKAL CHERRY,
MAYYANADU VILLAGE, KOLLAM.

BY ADV. SRI.ANCHAL C.VIJAYAN

RESPONDENTS: ACCUSED & STATE

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1. RATHEESAN NAIR,BARBER,CHINNU'S SALOON,
PALLICKAL, MADAVOOR,TRIVANDRUM DISTRICT.
(NOW RESIDING AT CHERUVILAVEEDU MAHADEVASWARAM,
PAZHAYAKUNNUMMEL CHERRY, PAZHAYAKNNUMMEL VILLAGE,
KILIMANNOOR, TRIVANDRUM DISTRICT.

2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MOHAMMED - R2

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 24/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 1663 OF 2007

Dated this the 24th day of September, 2007

JUDGMENT

This appeal is filed against the order in C.C. No.333 of 1996 on the file of the Judicial First Class Magistrate's Court II, Kollam. By the impugned order, the trial court acquitted the accused - first respondent herein, on the ground of absence of the appellant - complainant on the date of posting of the case. In the facts and circumstances of the case, this Court feels that the appeal can be disposed of at the admission stage itself.

2. It appears that the trial court had not complied with the dictum laid down by this Court in the decisions reported in **Don Bosco v. Partech Computers, 2005(2) K.L.T. 1003** and **G.F.S. Chit & Loans (P) Ltd. v. Rajesh, 2006(3) K.L.T. 825.** In the above two judgments, this Court had categorically held that unmerited disposal of complaints will affect dispensation of justice. Further, the Apex Court in the decision reported in **Associated Cement Co. Ltd. v. Keshvanand, 1998(1) K.L.T. 179 (SC)**

held that on order under Section 256(1) Cr.P.C. shall be passed only under the following circumstances:

> "First is, if the court thinks that in a situation it is proper to adjourn the hearing then the magistrate shall not acquit the accused. Second is, when the magistrate considers that personal attendance of the complainant is not necessary on that day the magistrate has the power to dispense with his attendance and proceed with the case. When the court notices that the complainant is absent on a particular day the court must consider whether personal attendance of the complainant is essential on that day for the progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must therefore, be exercised judicially and fairly without impairing the cause of administration of criminal justice."

3. In the above circumstances, this Court is of the view that the order of the trial court is liable to be set aside. The impugned order is accordingly set aside and the matter is remanded to the trial court for fresh disposal as per law.

The Crl. Appeal is allowed by way of remand. The parties shall appear before the trial court on 17.11.2007.

(K.THANKAPPAN, JUDGE)

sp/

K. THANKAPPAN, J.

CRL.A. NO.1663/2007

JUDGMENT

24TH SEPTEMBER, 2007